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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 19/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70492/2017-SM[BR] dated 05/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2024/2010	**U.G.SUGAR & INDUS. LTD.** SEOHARA, DISTT. BIJNOR. – U.P.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3 Advocate(s) / Consultant(s):

Kamaljeet Singh
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2024/2010-EX[SM]

(Arising out of Order-in-Appeal No.403-CE/MRT-II/2009 dated 17/12/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

U.G. Sugar & Indus. Ltd. **Appellant**
Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Kamaljeet Singh (Advocate) for Appellant
Shri Rajeev Ranjan JC(AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 05/05/2017
Date of Decision : 05/05/2017

FINAL ORDER NO. 70192/2017

Per: Anil Choudhary

The issue in this appeal filed by the appellant manufacturer of sugar and molasses is, whether they are entitled to Cenvat Credit on front end loader, vacuum pump and spares of crane under Rule 57 Q (1) read with explanation of the Central Excise Rules, 1944.

2. The learned counsel for the appellant explains that 'front end loader' which falls in Chapter 84 is used to provide adequate fuel at return baggasse carrier for maintaining a steam generation during any untoward stoppage of molasses, so that the pressure should maintain in processing of

production of the final product. So far as the 'vacuum pump' also classifiable under Chapter 84, states that these are important and essential equipment for sugar boiling process. These vacuum pumps further help in segregating the molasses in the process of production. So far as the 'cranes spares of unloader', also classifiable under Chapter 84, these are spares of loader and unloader and are essentially needed to maintain supply of baggasse for generation of steam. He further points out that the learned Commissioner (Appeals) considered the explanation under Sub Rule (1) of Rule 57Q of CER, 1944 which reads as follows:-

"Explanation. – For the purpose of this section-,

(1) 'Capital goods' means, following goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer, namely:-

(a) All goods falling under heading Nos. 82.02 to 82.11;

(aa) All goods falling under Chapter 84 (other than Internal Combustion engines falling under heading No. 84.07 or 84.08 and of a kind used in motor vehicles, Compressors falling under heading No. 84.14 and of a kind used in refrigerating and air conditioning appliances and machinery, heading or sub heading Nos. 84.15, 84.18, 8422.10, 84.24, 84.29 to 84.37, 84.40, 84.50, 84.52, 84.69 to 84.73, 84.76, 84.78, expansion valves and solenoid valves falling under sub-heading No. 8481.10 of a kind used for refrigerating and air conditioning appliances and machinery);

Arn

(b) All goods falling under Chapter 85 (other than those falling under heading Nos. 85.09 to 85.13, 85.16 to 85.31, 85.39 and 85.40);

(c) All goods falling under heading no. 90.11 to 90.13, 90.16, 90.17, 90.22 (other than for medical use 90.24 to 90.31 and 90.32), (other than of a kind used for refrigerating and air-conditioning appliances, and machinery);

(d) Components, spares, and accessories of the goods specified against items (a) to (c) above;

(e) Moulds and dies;

(f) Refractories and refractory materials;

(g) Tubes and pipes and fittings thereof, used in the factory;

(h) Pollution control equipment; and

(i) Grinding wheels and the like goods falling under Sub-heading No. 6801.10.

3. The learned counsel further states that the learned Commissioner have erroneously held that these three items in question, stood expressly excluded from the coverage of the definition of capital goods, applicable at the material time. Accordingly, he further states that the three items in question are squarely qualifying under the explanation, and accordingly, Cenvat Credit should have been allowed. The learned counsel have also relied on the ruling of the Madras High Court in CCE v/s India Cement Ltd. 2012 (285) ELT 341 wherein crane with accessories and loader, it has been held, if machinery or equipment is used for production or processing

of goods, for manufacture of final products, and they are capital goods on which assessee could claim credit of duty paid by them in terms of Explanation (1) to Rule 57 Q of CER, 1944 read with Rule 3 of CCR, 2004. Further reliance is placed on coordinate bench decision of this Tribunal in Man Structure Ldt. v/s CCE 1997 (93) ELT 457 where the assessee was engaged in manufacturing of transmission line, tower material and in the manufacture of the products, they claimed to use hydraulic mobile crane and had claimed Cenvat Credit of duty under Rule 57Q. It was held that mobile crane used for handling raw material, semi finished goods etc., used in the course of manufacture of final products is eligible for Modvat Credit under Rule 57Q of CER, 1944. The learned counsel also relied on another ruling of this Tribunal in CCE v/s Aarti Steels 2002 (148) ELT 972 wherein it is held that items like OT Cranes and its parts, Crane among other items are eligible for Modvat Credit under Rule 57 Q of CER, 1944. Accordingly, prays for allowing the appeal with the consequential benefit.

4. The learned AR relied on the impugned order.

5. Having heard the learned counsel for the appellant and learned AR for Revenue, I find that from the definition in Rule 57 Q read with explanation it is evident that all items falling under Chapter 84 are eligible save and except internal combustion engines of a kind used in motor vehicles, compressors of a kind used in refrigerator and air

conditioning appliances and machinery, expansion valves and solenoid valves of a kind used for refrigerating, air conditioning appliances and machinery. I find that the items in dispute do not fall under any of the exceptions and as such I hold that appellant is entitled to Cenvat Credit on the same. Accordingly I allow the appeal and set aside the finding of learned Commissioner (Appeals) on these three items in dispute in this appeal.

6. The appellant shall be entitled to consequential benefits in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit